

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 645

Introduced by Senator Dunn

February 22, 2005

An act to add Section 354.9 to the Code of Civil Procedure, and to add Chapter 3.2 (commencing with Section 8253) to Division 1 of Title 2 of the Government Code, relating to Mexican repatriation.

LEGISLATIVE COUNSEL'S DIGEST

SB 645, as amended, Dunn. Mexican repatriation: commission.

(1) Existing law establishes various advisory boards and commissions in state government with specified duties and responsibilities.

This bill would, until January 1, 2008, create the commission *on the Unconstitutional Deportation of American Citizens* during the 1930's within state government. The bill would require the commission to, among other things, gather facts regarding, and conduct a study of, the unconstitutional removal and coerced emigration of United States citizens and legal residents of Mexican descent, between 1929 and 1944, to Mexico during the 1930's "Repatriation" Program.

The bill would require the commission to hold public hearings and make a written report to the Governor and the Legislature concerning its actions and its findings and recommendations not later than July 1, 2009. The bill would provide that the commission may apply for and accept private funding. The bill would authorize the commission to be convened only if it is determined that sufficient private donations have been deposited with the state and would preclude expenditure of other state funds for these purposes.

The bill would provide that the commission terminates 6 months after it transmits its final report to the Governor and the Legislature on July 1, 2009.

(2) The bill would also establish the 1930's Reparations Fund in the General Fund and a ~~nine~~ 9 member board of directors ~~appoint~~ *appointed* by the Governor with the consent of the Senate, with specified duties for administering the fund and making payments to eligible individuals. The bill would specify the duties of the board and require the board to make a report on its activities to the Governor and the Legislature beginning every 6 months after the first meeting of the board. The board would terminate 90 days after the termination of the fund.

(3) Existing law authorizes various persons to bring civil actions for damages under specified circumstances.

This bill would authorize a victim of unconstitutional, wrongful, or coerced repatriation, defined as any United States citizen or legal resident of Mexican descent who was coerced, forced, or falsely induced to emigrate from this state during the period from 1929 to 1944, ~~or the victim's heir or beneficiary~~, to bring a legal action to recover damages in any court of competent jurisdiction in this state.

The bill would apply these provisions ~~(1)~~ (a) if the victim was coerced, forced, or falsely induced to emigrate by any city, county, or state governmental authority, or anyone acting under color of that authority, including, but not limited to, any private individual or business entity, or ~~(2)~~ (b) if that person resides in this state and has a claim arising out of that unconstitutional, wrongful, or coerced repatriation, as specified.

The bill would also provide that any action brought pursuant to this provision may not be dismissed for failure to comply with the applicable statute of limitations or to exhaust any applicable administrative remedies or governmental tort claims procedures, if the action is commenced on or before December 31, 2006. *The bill would bar any legal action brought against the state under this provision by any individual who is eligible to accept payment from the 1930's Reparations Fund if the Legislature appropriates moneys for the purposes of the provisions governing that payment.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 354.9 is added to the Code of Civil
2 Procedure, to read:

1 354.9. (a) The following definitions govern the construction
2 of this section:

3 (1) “Victim of unconstitutional, wrongful, or coerced
4 repatriation” means any United States citizen or legal resident of
5 Mexican descent who was coerced, forced, or falsely induced to
6 emigrate from this state during the period from 1929 to 1944,
7 inclusive, by any city, county, or state governmental authority, or
8 anyone acting under color of that authority, including, but not
9 limited to, any private individual or business entity that conspired
10 with any city, county, or state governmental authority, or anyone
11 acting under color of that authority, to violate the state or federal
12 constitutional or property rights of that person

13 (2) “Damages” means any and all damages for any harm, loss,
14 or detriment sustained by any victim of unconstitutional,
15 wrongful, or coerced repatriation by reason of the coerced,
16 forced, or falsely induced emigration from this state by any city,
17 or county governmental authority, or anyone acting under color
18 of that authority, including, but not limited to, any private
19 individual or business entity that conspired with any city, county,
20 or state governmental authority, or anyone acting under color of
21 that authority, to violate the state or federal constitutional or
22 property rights of any victim of unconstitutional, wrongful, or
23 coerced repatriation.

24 (b) Notwithstanding any other provision of law, any victim of
25 unconstitutional, wrongful, or coerced repatriation, ~~or the heir or~~
26 ~~beneficiary of a victim of unconstitutional, wrongful, or coerced~~
27 ~~repatriation, who has a claim arising out of the victim’s coerced,~~
28 *who has a claim arising out of his or her coerced,* forced, or
29 falsely induced emigration from this state by any city, county, or
30 state governmental authority, or anyone acting under color of that
31 authority, including, but not limited to, any private individual or
32 business entity that conspired with any city, county, or state
33 governmental authority, or anyone acting under color of that
34 authority, to violate the state or federal constitutional or property
35 rights of any victim of unconstitutional, wrongful, or coerced
36 repatriation, may bring a legal action to recover any damages in
37 any court of competent jurisdiction in this state and that court
38 shall be deemed the proper forum for that action until its
39 completion or resolution.

(c) No legal action may be brought against the state by any individual who is eligible to accept payment ~~pursuant to The 1930's Reparation Fund pursuant to Section 8254 of the~~ *from the 1930's Reparations Fund if the Legislature appropriates moneys to carry out the purposes of Chapter 3.2 (commencing with Section 8254) of Division 1 of Title 2 of the Government Code.*

(d) No action brought under this section may be dismissed for failure to do either of the following:

(1) Comply with the applicable statute of limitations.

(2) Exhaust any applicable administrative remedies or governmental tort claim procedures otherwise provided by any statute, if the action is commenced in any court of competent jurisdiction on or before July 1, 2011.

SEC. 2. Chapter 3.2 (commencing with Section 8253) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 3.2. THE COMMISSION ON THE UNCONSTITUTIONAL DEPORTATION OF AMERICAN CITIZENS DURING THE 1930's.

8253. The Legislature finds and declares all of the following:

(a) Beginning in 1929, government authorities and certain private sector entities in California and throughout the United States undertook an aggressive program to forcibly remove persons of Mexican ancestry from the United States.

(b) In California alone, approximately 400,000 American citizens and legal residents of Mexican ancestry were forcibly removed to Mexico.

(c) In total, it is estimated that two million people of Mexican ancestry were forcibly relocated to Mexico, approximately 1.2 million of whom had been born in the United States, including the State of California.

(d) Throughout California, massive raids were conducted on Mexican-American communities, resulting in the clandestine removal of thousands of people, many of whom were never able to return to the United States, their country of birth.

(e) These raids also had the effect of coercing thousands of people to leave the country in the face of threats and acts of violence.

(f) These raids indiscriminately targeted persons of Mexican ancestry, with authorities and others characterizing these persons

1 as “illegal aliens” even when they were United States citizens or
2 permanent legal residents.

3 (g) Authorities in California and other states instituted
4 programs to wrongfully remove persons of Mexican ancestry and
5 secure transportation arrangements with railroads, automobiles,
6 ships, and airlines to effectuate the wholesale removal of persons
7 out of the United States to Mexico.

8 (h) As a result of these illegal activities, families were forced
9 to abandon, or were defrauded of, personal and real property,
10 which often was sold by local authorities as “payment” for the
11 transportation expenses incurred in their removal from the United
12 States to Mexico.

13 (i) As a further result of these illegal activities, United States
14 citizens and legal residents were separated from their families
15 and country and were deprived of their livelihood and United
16 States constitutional rights.

17 (j) As a further result of these illegal activities, United States
18 citizens were deprived of the right to participate in the political
19 process guaranteed to all citizens, thereby resulting in the tragic
20 denial of due process and equal protection of the laws.

21 8253.1. (a) The Commission on the Unconstitutional
22 Deportation of American Citizens During the 1930’s is hereby
23 established within state government.

24 (b) The commission shall be composed of 12 voting members,
25 who shall be appointed as follows:

26 (1) Four members appointed by the Governor, not subject to
27 Senate confirmation.

28 (2) Four members appointed by the Senate Committee on
29 Rules.

30 (3) Four members appointed by the Speaker of the Assembly.

31 (c) The commission shall also include the following:

32 (1) Two ex officio, nonvoting members of the Senate
33 appointed by the Senate Committee on Rules.

34 (2) Two ex officio, nonvoting members of the Assembly
35 appointed by the Speaker of the Assembly.

36 (d) Of the four members appointed by the Governor, the four
37 members appointed by the Senate Committee on Rules and the
38 four members appointed by the Speaker of the Assembly, as set
39 forth in subdivision (b), each of the four shall include one of each
40 of the following:

1 (1) A California public university professor.

2 (2) An attorney in private practice in California.

3 (3) A representative of a nonprofit organization that advocates
4 on behalf of Latinos and immigrants.

5 (4) A public member.

6 (e) The term of office for all members shall be for the duration
7 of the commission. A vacancy in the commission shall not affect
8 its powers, and shall be filled in the same manner in which the
9 original appointment was made.

10 (f) Seven members of the commission shall constitute a
11 quorum, but a lesser number may hold meetings and hearings.

12 (g) The commission shall elect a chair and vice chair from
13 among its members. The term of office of each shall be for the
14 duration of the commission.

15 (h) Members of the commission shall serve without
16 compensation. All members of the commission may be
17 reimbursed for travel, subsistence, and other necessary expenses
18 incurred by them in the performance of their duties if funds are
19 available for these purposes. No state funds, other than private
20 donations available to the commission pursuant to this chapter,
21 shall be appropriated to reimburse members for expenses or for
22 any other purpose under this chapter.

23 8253.2. (a) It shall be the duty of the commission to gather
24 facts regarding, and conduct a study of, the unconstitutional
25 removal and coerced emigration of United States citizens and
26 legal residents of Mexican descent, between 1929 and 1944, to
27 Mexico, during the government sponsored repatriation program
28 of the 1930's.

29 (b) The commission shall hold public meetings or hearings in
30 any city that the commission deems necessary and proper.

31 (c) The commission shall make recommendations to the
32 Governor and the Legislature including, but not limited to, all of
33 the following:

34 (1) Altering California public schools' curricula to include the
35 unconstitutional removal and coerced emigration of American
36 citizens and legal residents to Mexico during the 1930's, as
37 described in Section 8253.

38 (2) Determining responsibility for the unconstitutional
39 removal and coerced emigration of American citizens and legal
40 residents to Mexico during the 1930's.

(3) Implementing the fund, as set forth in Section 8254 including:

(i)

(A) Determining the appropriate monetary compensation for eligible recipients of the fund.

(ii)

(B) Establishing eligibility criteria for compensation under the fund.

(iii)

(C) Recommending redress legislation necessary to activate the fund.

(4) The commission may make other findings or recommendations it deems necessary to discharge its duties.

(d) The commission shall submit a written report of its findings and recommendations to the Governor and the Legislature within two years after the commission has commenced its research and study, as set forth in subdivision (a) of Section 8253.2.

8253.3. (a) The commission may authorize any subcommittee or member thereof, for the purpose of carrying out this chapter, to hold hearings and sit and act at those times and places, and request the attendance and testimony of those witnesses and the production of books, records, correspondence, memoranda, papers, and documents that the commission or any subcommittee or member thereof may deem advisable.

(b) The commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive and legislative branches of state government, any and all necessary information that the commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive and legislative branches of state government shall cooperate with the commission and furnish all information requested by the commission.

(c) The commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of local government, at the discretion of the head of the relevant authority of local government, any and all necessary information that the commission considers useful in the discharge of its duties.

1 8253.4. (a) The commission is authorized to do all of the
2 following:

3 (1) Appoint and fix the compensation of ~~such~~ personnel as
4 may be necessary.

5 (2) Obtain the services of experts and consultants.

6 (3) Enter into agreements for procurement of necessary
7 financial and administrative services, for which payment shall be
8 made by reimbursement from funds of the commission.

9 (4) Procure supplies, services, and property, and make
10 contracts, for which payment shall be made by reimbursement
11 from funds of the commission.

12 (5) Enter into contracts with state or federal agencies, private
13 firms, institutions, and agencies for the conduct of research or
14 surveys, the preparation of reports, and other activities necessary
15 to the discharge of its duties.

16 (b) The commission shall, not later than July 1, 2009, transmit
17 a final report to the Governor and the Legislature concerning its
18 actions and its findings and recommendations.

19 8253.6. The commission may apply for and accept grants and
20 receive gifts, donations, and other financial support from private
21 sources for purposes of this chapter, subject to the requirements
22 of Sections 11005 and 11005.1.

23 8253.7. (a) The commission shall be convened pursuant to
24 this chapter only after a determination has been made that private
25 donations in an amount sufficient to support the activities of the
26 commission through the operative period of this chapter have
27 been deposited with the state.

28 (b) The commission shall end, and its duties under Sections
29 8253.2, 8253.3, and 8253.4 shall be revoked, not later than six
30 months after it has transmitted a final report to the Governor and
31 the Legislature concerning its actions and its findings and
32 recommendations under subdivision (b) of Section 8253.4.

33 8254. There is established the 1930's Reparations Fund
34 (hereinafter the fund) in the General Fund. There is also
35 established the 1930's Reparations Fund Board of Directors
36 (hereinafter the board), which shall be responsible for making
37 disbursements from the fund upon appropriation by the
38 Legislature in the manner provided in Sections 8254.1 and
39 8254.2.

1 (a) An eligible individual may notify the board that he or she
2 is an eligible individual, and may provide documentation
3 therefor. The board shall do all of the following:

4 (1) Designate an officer or employee to whom the notification
5 and documentation may be sent.

6 (2) Maintain a list of all individuals who submit the
7 notification and documentation.

8 (3) Encourage, through a public awareness campaign, each
9 eligible individual to submit his or her current address to the
10 designated officer or employee.

11 (b) The board shall notify each eligible individual in writing of
12 his or her eligibility for payment under this section. The notice
13 shall inform the eligible individual of the following:

14 (1) Acceptance of payment under this section shall be in full
15 satisfaction of all claims against the State of California arising
16 out of the acts described in Section 8253.

17 (2) Refusal to accept payment shall:

18 (A) Be submitted in writing to the board and the amount of the
19 payment shall remain in the fund and no payment may be made
20 to that individual at any time after his or her refusal.

21 (B) Be in full satisfaction of all claims against the State of
22 California arising out of the acts described in Section 8253.

23 (3) Each eligible individual who neither refuses nor accepts
24 payment, 18 months after receiving a written notice shall be
25 deemed to have accepted payment for purposes of subdivision
26 (c).

27 (c) The acceptance of payment by an eligible individual shall
28 be in full satisfaction of all claims against the State of California
29 arising out of the acts described in Section 8253.

30 (d) No payment may be made to any individual who accepts
31 payment pursuant to an award of a final judgment or a settlement
32 on a claim against the State of California *brought pursuant to*
33 *Section 354.9 of the Code of Civil Procedure*, for any of the acts
34 described in Section 8253.

35 (e) The board shall endeavor to make payments to eligible
36 individuals in the order of date of birth, beginning with the oldest
37 individual on the date of the enactment of this act, until all
38 eligible individuals have received payment in full.

39 (f) In attempting to locate an eligible individual, the board
40 may use any facility or resource of any public or nonprofit

1 organization or any other record, document, or information that
2 may be made available to the board.

3 (g) No costs incurred by the board shall be paid from the fund
4 or set off against, or otherwise deducted from, any payment to
5 any eligible individual.

6 8254.1. (a) The board may make disbursements from the
7 fund as to either of the following:

8 (1) To publish and distribute the hearings, findings, and
9 recommendations of the commission.

10 (2) For reasonable administrative expenses of the board,
11 including expenses incurred under subdivisions (c); and (f).

12 (b) ~~The Board~~ *board* shall be composed of nine members
13 appointed by the Governor with the consent of the Senate.

14 (1) Except as provided in paragraphs (2) and (3), members
15 shall be appointed for terms of three years.

16 (2) Of the members first appointed, four shall be appointed for
17 terms of two years, as designated by the Governor at the time of
18 appointment.

19 (3) Any member appointed to fill a vacancy occurring before
20 the expiration of that member's term shall be appointed only for
21 the remainder of that term. A member may serve after the
22 expiration of a member's term until a new member is appointed.
23 No person may be appointed as a member for more than two
24 consecutive terms.

25 (c) Members of the board shall serve without pay, except that
26 members of the board shall be entitled to reimbursement for
27 travel, subsistence, and other necessary expenses incurred by
28 them in carrying out the duties of the board.

29 (d) Five members of the board shall constitute a quorum.

30 (e) The chair of the board shall be elected by the members of
31 the board.

32 (f) The board shall have an executive director who shall be
33 appointed by the board. The board may appoint and fix the pay of
34 additional staff as it may require.

35 (g) The board may accept, use, and dispose of gifts or
36 donations of services or property for the purposes authorized
37 under subdivision (a).

38 (h) Not later than 12 months after the first meeting of the
39 board and every six months thereafter, the board shall transmit to

1 the Governor and to the Legislature a report describing the
2 activities of the board.

3 (i) Ninety days after the termination of the fund, the board
4 shall terminate and all obligations of the board under this chapter
5 shall cease.

6 8254.2 The provisions of this chapter are severable. If any
7 provision of this act or its application is held invalid, that
8 invalidity shall not affect other provisions or applications that can
9 be given effect without the invalid provision or application.

O